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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 12th October 1953

S.R.O. 1990.—Whereas the elections of Shri Bashir Hussain Zaidi, 16, Civil Lines, Ward No. 10, Mohalla No. 191, Civil Lines, Rampur, District Rampur and Shri Bulaqi Ram, House No. 479, Mohalla Saraithok, Ward No. 3, Hardoi, as members of the House of the People, from the Hardoi District (North West) *cum* Farrukhabad District (East) *cum* Shahjahanpur District (South) constituency of that House, have been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shrimati Shanta Devi Vaidya, W/o Shri Krishan Bihari Vaid, House No. 2, Hasanganj Sarai, Lucknow;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, FAIZABAD**PRESENT—**

- (1) Sri D. N. Roy, *Chairman*.
- (2) Sri A. Sanyal, *Member*.
- (3) Sri M. U. Faruqi, *Member*.

ELECTION PETITION No. 321 OF 1952**Srimati Shanta Devi Vaidya—Petitioner.***Versus*

- (1) Sri Bashir Husain Zaidi;
- (2) Sri Bulaqi Ram;
- (3) Sri Indrajit Singh Rajapasi;
- (4) Sri Kishan Chand Puri;
- (5) Sri Gajraj Bahadur;
- (6) Sri Chokhey;
- (7) Sri Niranjan Singh;
- (8) Sri Prakash Narain Mukhtar;
- (9) Sri Munishwar Bakhsh Singh;
- (10) Sri Ram Ratan Gupta;

- (11) Sri Ram Swarup Gupta;
- (12) Sri Moti Shanta Devi Vaidya;
- (13) Sri Hira Lal;
- (14) Sri Sunder Lal Ji;
- (15) Sri Ram Nath;
- (16) Sri Chidda Lal;
- (17) Sri Ram Sewak—*Respondents*.

JUDGMENT

This is an election petition filed by Srimati Shanta Devi Vaidya who was one of the candidates for election to the House of the People from Hardoi district (North-West)-*cum*-Farrukhabad district (East)-*cum*-Shahjahanpur district (South) constituency for the general election held in 1951-52 challenging the election of respondents Nos. 1 and 2, who are the returned candidates and claiming that the election be declared null and void as a whole.

2. The petition has been contested by respondents Nos. 1 and 2. A written statement has also been filed by respondent No. 13 who has lent support to the petitioner. In his written statement respondent No. 1 raised the plea *inter alia* that many of the allegations in the petition of Srimati Shanta Devi Vaidya are indefinite, general and vague, without the requisite list and instances specifying the alleged illegal practices. The particulars of indefiniteness and vagueness were stated by respondent No. 1 in a petition filed by him, a copy of which was furnished to the petitioner's counsel, and it was prayed on behalf of respondent No. 1 that those allegations in the petition of Srimati Shanta Devi Vaidya and in the annexure appended to it, which are not accompanied by a list and are wanting in particulars, should be struck off and that issues should be settled after the decision of that matter. It was alleged in support of that application that the matters which can properly be made the subject of investigation and decision will be limited to a very narrow compass after the decision of the petition and that it was but necessary that the respondents should know the extent and scope of the evidence that they would be required to lead at the trial. After that petition was made and arguments were heard on it, an application purported to be one under section 83(3) of the Representation of the People Act, 1951, was made on behalf of the petitioner, Srimati Shanta Devi Vaidya, to which was annexed a list of particulars which manifestly had been wanting in the original petition or in the original annexure attached to that petition. In answer to that application under section 83(3) of the Act, the respondent No. 1 contended that the petitioner was not entitled to submit the fresh list in view of the mandatory provisions of section 83(2) of the Representation of the People Act, 1951. Accordingly the preliminary question as to whether the original petition and the annexure attending it suffer from being general, vague and indefinite and whether any of the allegations in the petition and in the annexure should on that account be deleted, and also whether the particulars subsequently furnished in the petition purported to have been made under section 83(3) of the Representation of the People Act, 1951, by Srimati Shanta Devi Vaidya should or should not be accepted had been considered by us, and by our order dated the 17th of January, 1953, we held that the whole of paragraph 4 of the petition, part of paragraph 5 of the petition, the whole of paragraph 7 of the petition, part of paragraph 8 of the petition, the whole of paragraphs 9, 11 and 12 of the petition, the whole of annexure A of the petition except paragraphs (a), (b), (f) and (g) under the heading "details of the conditions of the ballot boxes" and paragraph (a) under the heading "irregularities" suffered from the defect of being general vague and indefinite and they could not on that account be made the subject of charge or of investigation. We further held that the subsequent petition purported to have been made under section 83(3) of the Representation of the People Act, 1951, cannot be accepted. We accordingly directed that the allegations aforesaid in the petition and in the annexure be deleted.

3. After excluding the irrelevant portions in the petition and in the annexure, the field of enquiry lies within a narrow compass. The constituency in question was a double member constituency. One seat was reserved for a scheduled caste candidate to which Sri Bulaqi Ram, respondent No. 2, had been returned. Besides the petitioner the other candidates were the respondents. Four of the respondents, namely, Nos. 14, 15, 16 and 17 had withdrawn their candidature within the time prescribed by law. Out of the candidates who contested the election, respondents Nos. 1 and 2 were declared elected on the 21st of February, 1952, by the Returning Officer and their names were published in the *Gazette of India* dated the 2nd of April, 1952. They filed their returns of election expenses on the 10th of April, 1952, and 9th of April, 1952, respectively with the Returning Officer. Three nomination papers were filed on the last date in respect to

respondent No. 1, namely, on the 24th of November, 1951. They bear date of 3rd November 1951. They are all on typed forms. The particulars in Exhibits 1 and 2 were filled in by Sri Tribeni Sahai Advocate, P.W. 1, and those in Ex. 4 were filled in by Sri Ram Kishore Vakil, P.W. 2. Ex. 1 was proposed by Sri Taqdir Bahaqur and seconded by Sri Vijai Chand Pande, P.W. 14, Ex. 2 was proposed by Sri Mohan Lal Varma, P.W. 13, and seconded by Sri Kanhaiya Lal Seth, P.W. 3. Ex. 4 was proposed by Sri Manakki Lal, P.W. 8, and seconded by Sri Sanwle Behari, P.W. 6. Admittedly Sri Bashir Husain Zaidi, respondent No. 1, left India for Paris as a delegate to the U.N.O. on the 4th of November, 1951, and he returned from there sometime in the X'mas week of that year. The existing grounds on which the election has been challenged as a whole are contained in paragraphs 5, 6, 8 and 10 of the petition and in paragraphs (a), (b), (f) and (g) under the heading "details of the conditions of the ballot boxes" and paragraph (a) under the heading "irregularities" of the annexure to the petition. In paragraph 5 of the petition it has been urged that "the result of the aforesaid election was materially affected by the improper acceptance of the nomination papers of respondent No. 1 who was not even in India at the time his nomination was proposed and seconded and when he was not in a position to sign his nomination papers and to make a valid declaration as to his agreeing to the nomination on the date and at the time of his nomination." Paragraph 6 of the petition is to the effect that "Respondent No. 1 did not sign the nomination papers in the presence of the person who purported to identify his signatures. The nomination papers have been deliberately outdated and the whole thing is a complete fraud and his nomination papers, even if signed by him, contravened the provisions of law and that he has declared himself to be a member of scheduled caste or tribe as a candidate for the said caste or tribe." Paragraph 8 is to the effect that the Returning Officer also erred in accepting the nomination of respondent No. 1. Paragraph 10 of the petition is to the effect that the aforesaid election was held on 22nd January 1952, 25th January 1952, 28th January 1952 and 31st January 1952 at different polling stations within the aforesaid constituency and the ballot boxes used for holding the aforesaid election did not only lack the standard and specification laid down in the said Election Rules of 1951 as safeguards against tampering with them and to prevent transferring ballot paper of one candidate from his box to that of another, but were wholly defective, as it was clear from their condition as pointed out and acknowledged by the Returning Officer at the time of commencement of the counting of votes.

4. Under the heading "details of the conditions of the ballot boxes" the paragraphs which exist for consideration are these:—

- (a) Several ballot boxes were on being lifted by their handles by Sri Abdulla and Sri Magan Behari to be taken to the counting table opened of themselves and their ballot papers came out whereon the agent of Sri Zaidi rebuked Sri Abdulla and Sri Magan Behari to lift the boxes by their body and not by their handles. This was done with a view to prevent disclosure of the true condition of the boxes due to tampering with them.
- (b) That those ballot boxes which had seals on could be easily opened without impairing the seals and the fact was demonstrated to the Returning Officer on the spot.
- (f) Ballot boxes of Shahjahanpur and Farrukhabad district, part of the constituency, were not brought to Hardoi for counting in the presence of the Returning Officer who stayed throughout at Hardoi.
- (g) The petitioner's agent was refused admission to counting at Kannauj.

5. Under the heading "irregularities" the allegation which exists in the petition is:—

- (a) That the counting of votes was not done at one centre for the whole constituency and the Returning Officer was not present at the counting at Shahjahanpur and Kannauj.

6. The contesting respondents Nos. 1 and 2 have emphatically denied the assertions contained in paragraphs 5, 6, 8 and 10 of the petition as also the allegation in the annexures, except that it has been admitted that the counting was not done at one centre and that the Returning Officer was not present at Shahjahanpur and Kannauj at the time of counting. It has been contended that there was no irregularity in this matter and that if any irregularity be deemed to exist, it did not materially affect the result of the election. Respondent No. 1 has further taken the plea that the petition is not legally maintainable as it is not

verified in accordance with law, that the annexure is not properly signed and that the petitioner is not entitled to any relief. The pleadings of the parties gave rise to the following issues:—

- (1) (a) Whether the nomination of respondent No. 1 was invalid and was the nomination paper wrongly accepted for reasons stated in paragraphs 5 and 6 of the petition?
- (b) Whether any of such reasons are in fact correct?
- (c) Was the result of the election materially affected thereby?
- (2) Were the ballot boxes defective as alleged in paragraph 10 of the petition and can the election of respondent No. 1 be challenged on this ground?
- (3) Are the allegations contained in paragraphs (a), (b), (f) and (g) of list under the heading "details of the conditions of the ballot boxes" and paragraph (a) under the heading "irregularities" correct? If so, its effect? Was the result of the election materially affected thereby?
- (4) Is the petition not verified as required by law? Is the annexure not properly signed? Is the petition not legally maintainable on that score?
- (5) To what relief, if any, is the petitioner entitled?

7. We shall take up the fourth issue first. This relates to the verification of the petition and the signing of the annexure. The annexure appears to have been signed by the petitioner. Our attention has not been drawn to any irregularity in the matter. We are, therefore, of opinion that the annexure is properly signed and the petition is not defective for want of proper signature of the annexure.

8. As regards the verification of the petition, it is in the following terms:—

"I, Smt. Shanta Devi Vaidya, Petitioner, do hereby verify that the contents of paragraphs 1 to 5, 6(a) to (c) and 7(a) to (g) and 11 of this petition are true to my knowledge and those of para. 6(d), 8 and 11 are true to my belief.

Signed this the 6th day of June 1952 at my residence in Hasanganj Sarai Lucknow."

If we look into this verification, we would find that paragraph 11 of the petition has been repeated twice over. In one part of the verification the allegation in paragraph 11 of the petition has been verified as true to knowledge and in another part of the petition it has been verified as true on belief. It would further appear from the verification that paragraphs 9 and 10 of the petition have not been verified at all. Paragraphs 9 and 11 have been completely expunged from the petition by our order dated the 17th of January, 1953, by which we have held that they suffered under vagueness and for want of particulars. We are, therefore, left with paragraph 10 of the petition so far as this question is concerned, and it may be urged that since that paragraph of the petition has not been verified at all, the petition suffers under a defect and therefore the allegation in paragraph 10 should not be made the subject of enquiry. There can be no doubt whatsoever that the verification of the petition is defective to the extent indicated above. The petitioner has admitted in her evidence in this court that paragraphs 9 and 10 of the petition were not verified by her and that the omission was purely accidental or by oversight. Be that as it may, we are of opinion that the petition must not be thrown out on that technical ground when, as a matter of fact, the verification in regard to the rest of the petition appears to us to be substantially according to law. We are guided in this matter also on equitable grounds where the parties have proceeded to give evidence upon the facts which they have alleged in their pleadings. We would, therefore, hold that the verification of the petition is substantially in accordance with law, but it is partly defective in so far as paragraphs 9 and 10 of the petition were not verified and the verification of paragraph 11 was not strictly correct, but that this irregularity is not sufficient to compel us to reject the petition altogether on that score.

9. This brings us to the question formulated in issue No. 2, namely, whether the ballot boxes were defective as alleged in paragraph 10 of the petition and whether the election of respondent No. 1 can be challenged on that score. The substantial ground which has been stated in paragraph 10 is that the ballot boxes which were used lacked the standard and specification laid down in the Election Rules of 1951 and these boxes did not provide the safeguards against tampering with them so as to prevent the transference of ballot papers of one candidate from his box to that of another candidate and that this defect had been pointed

out to the Returning Officer at the time of the commencement of the counting of votes. On this issue we have the evidence of Sri Bhajami Shankar P.W. 9, who was the counting agent of the petitioner and of Magan Bihari Lal P.W. 10, Smt. Shanta Devi Vaidya, the petitioner P.W. 11, Sri Bhagwant Singh, Distt. Magistrate Saharanpur, who was the Returning Officer P.W. 12 and Exhibits 5, 6, 7, 8, 9 and 17 as also the evidence of Sri J. K. Tandon P.W. 7, who was the Chief Electoral Officer of the State. We shall in this connection begin with the evidence of Sri J. K. Tandon. According to his statement the ballot boxes were prepared under the orders and directions of the Election Commission of India, the design, the make and the specification whereof were those of the Election Commission. He testified to the fact that the manufacturers prepared every ballot box in accordance with those specifications, that at every manufacturing centre an inspector was posted who checked each and every ballot box that was manufactured and he had to put his seal on every box in token of his having checked the same and in token of his certifying that it was according to specification. He stated that after the elections certain letters were received by him to the effect that the ballot boxes could be tampered with without breaking the seals, but it was not a general sort of a complaint. Sri J. K. Tandon, who has been examined on the side of the petitioner, does not, therefore, confirm what is contained in paragraph 10 of the petition. We may next refer to the evidence of Sri Bhajami Shankar P.W. 9. Sri Magan Bihari P.W. 10, Srimati Shanta Devi Vaidya P.W. 11 and to the objections Exhibits 5, 6, 7, 8, 9 and 17 made on behalf of the petitioner and also to the evidence of Sri Bhagwant Singh P.W. 12. Sri Bhajami Shankar, Magan Bihari and Smt. Shanta Devi Vaidya have stated that some of the ballot boxes were defective and they did not afford sufficient safeguard against tampering with them. The evidence of Returning Officer Sri Bhagwant Singh P.W. 12 is to the effect that the boxes were received at the Chhatriva College, Hardoi, by the morning following the day of the election, that the boxes were kept there under lock and key with constant police guard, that in regard to some of the boxes a demonstration was made before him at the time of counting to the effect that they could be opened and closed without breaking the seals, that although that defect existed, it was a mere irregularity on the part of inexperienced presiding officers and that after an examination and the count of the ballot papers no unauthorised ballot paper was found and no objection or allegation had been made by and on behalf of Smt. Shanta Devi Vaidya that there was any tampering with the ballot boxes. He went on to confirm his view that no such material irregularity in the election or in the counting existed which might have materially affected the result of the election. On the other side there is the evidence of the respondents who have said that the ballot boxes were of the standard and specification as contained in the rules and there was no tampering. It would, therefore, follow that the ballot boxes were not defective as alleged in paragraph 10 of the petition and since there is evidence to show that no tampering took place at any stage and there was no allegation whatsoever on behalf of Smt. Shanta Devi Vaidya at the time of counting to the effect that there was any tampering with the ballot boxes, the election of respondent No. 1 cannot be challenged on the ground contained in paragraph 10 of the petition.

10. This brings us to a consideration of issue No. 3. It concerns the question whether the allegations contained in paragraphs (a), (b), (f) and (g) of the list under the heading "details of the conditions of the ballot boxes" and paragraph (a) under the heading "irregularities" are correct, and if so, what would be its effect, and was the result of the election materially affected thereby. To examine this question we have to go back to the evidence of Sri Bhagwant Singh P.W. 12 and have to refer to Exs. 11 to 16 which were made on the date of the counting. Sri Bhagwant Singh has stated that the orders contained in Exs. 11 to 16 are in his handwriting and are signed by him. In those orders he specifically noted that although certain irregularities in the sealing of the ballot boxes had been brought to his notice and a demonstration had been made in relation to some of the boxes to the effect that they could be opened without breaking the seals, he could say upon his own knowledge of the manner in which the boxes were received and kept in safety that actually there was no tampering and that the result of the election was not in any way affected by such irregularities. There can be no denying the fact that in an election of this magnitude where a large number of presiding officers, polling officers and polling clerks and others had been harnessed to do the work, it could not be expected that everyone of such officer would do every part of the work with meticulous precision and clarity. The question in all such cases would be whether on the face of the irregularities there is evidence to show that the boxes were tampered with so as to materially affect the result of the election. As we have already said, the evidence on this point was all the other way. There was not an iota of evidence to show that the boxes had been tampered with or that the voting paper of one candidate had been transferred from his box on to the box of another.

11. It is conceded that the ballot boxes of Shahjahanpur and Kannauj in the Farrukhabad district which were part of the constituency in question were not brought to Hardoi for counting. The counting at those places had been done by Assistant Returning Officers in their presence and under their supervision. Sri Bhagwant Singh, the Returning Officer, admitted that he did not go to Kannauj for the counting. The date for the counting at Kannauj and Shahjahanpur had been notified by the Returning Officer to the candidates. It is in the evidence of the Returning Officer that no candidate had made any representation to him to the effect that the counting should not take place at Kannauj and Shahjahanpur. The candidates or their agents attended the counting at the two places, as also at the third place Hardoi. It cannot, therefore, be said that since the ballot boxes of Shahjahanpur and Kannauj in the Farrukhabad district were not brought to Hardoi for counting, the election is vitiated on that score.

12. It appears that at Kannauj the petitioner's agent, Sri Bhajami Shankar P.W. 9, at the time of the counting tried to impress upon the Assistant Returning Officer that the counting was not being done properly. His objections were found frivolous and the Assistant Returning Officer felt that it amounted to an interference with the fair progress of counting. He accordingly instructed Bhajami Shankar that he could supervise the counting and go to the counting clerks in the main hall where the counting was going on along with the Assistant Returning Officer himself. The place that was provided to Sri Bhajami Shankar in the main hall in common with other agents was a place from which the counting could be supervised. Sri Bhajami Shankar's objection was, therefore, more or less frivolous when he contended that he was refused admission by the Assistant Returning Officer at the time of counting at Kannauj. In fact he sent a telegram to the Returning Officer at Hardoi and in reply the Returning Officer wired to the Assistant Returning Officer at Kannauj that every facility should be given to Sri Bhajami Shankar to supervise the counting. That facility was given to him. It cannot, therefore, be said that the petitioner's agent was refused admission to the counting at Kannauj. We are therefore led to the conclusion under issue No. 3 that the allegations in regard to the conditions of the ballot boxes and the irregularities at the time of counting do not substantially exist and that the result of the election was not in any way affected thereby.

13. We are now left with the consideration of issue No. 1 which is the vital issue in the case and on which most of the evidence has been advanced and the whole argument has been centralised. The averments in the petition bearing upon this issue are contained in paragraphs 5 and 6. It has been alleged that the result of the election was materially affected by the improper acceptance of the nomination papers of respondent No. 1 who was not even in India at the time his name was proposed and seconded and when he was not in a position to sign his nomination papers and to make a valid declaration as to his agreeing to his nomination on the date and at the time of his nomination. It was further alleged that respondent No. 1 did not sign the nomination papers in the presence of the person who purported to identify his signatures and that the nomination papers have been deliberately outdated and the whole thing is a complete fraud and his nomination papers even if signed by him contravened the provisions of law and he has declared himself to be a member of scheduled caste or tribe as a candidate for the said caste or tribe. The specific case as developed in the trial by the petitioner is materially different from what has been stated in the petition itself. The case as developed at the trial was not foreshadowed by the allegations in paragraphs 5 and 6 of the petition. At the trial an attempt has been made by the petitioner to prove that the nomination papers Exs. 1, 2 and 4 were filled in, proposed and seconded on 24th November 1951. A further attempt was made to assert that the nomination papers do not bear the signatures of respondent No. 1 at all. In fact it was asserted at one stage that the alleged signatures of respondent No. 1 on the nomination papers Exs. 1, 2 and 4 are traced forgeries. It was pressed before us in July 1953 that the petitioner should be permitted to examine a hand-writing expert on the point of the signatures of respondent No. 1 on the nomination papers Exhs. 1, 2 and 4 being genuine or "forged and traced". By our order dated the 11th of July, 1953, we held that if the prayer of the petitioner in that regard were to be allowed, it will amount to an indirect amendment of the election petition and to import something into it which was originally vitally conspicuous by its absence. In arriving at that conclusion we briefly traced the history of the matter. When the case came up before us on the 24th of December 1952, for settlement of issues a motion was made on behalf of respondent No. 1 to the effect that certain portions of the petition of Smt. Shanta Devi Vaidya were lacking in particulars and should be struck off so as to limit the enquiry in respect to those matters only about which there are particulars in the petition or in list attached to the same. Time was then taken by the

petitioner to move an application for amendment and that opportunity was availed of when she moved an application on the 22nd of December 1952 purporting to be one under section 83(3) of the Representation of the People Act. There were certain annexures to that petition and it was prayed that the list of particulars contained in the annexures be treated as part of annexure A of the original petition. We have already referred to our order dated the 17th of January, 1953, by which we held that certain paragraphs in original petition and the annexure were vague and indefinite and wanting in particulars and should not form the basis of investigation and we directed that the same be struck off. By the same order we further held that the particulars given in the subsequent annexure dated the 22nd of December, 1952, could not be entertained. It was worthy of note that in the amendment petition of the 22nd of December, 1952, no attempt was made to incorporate in paragraphs 5 and 6 of the petition that the signatures of respondent No. 1 on the nomination papers were "forged or traced". We gave our anxious thought to paragraphs 5 and 6 of the petition and we did not think that the allegations contained in them at all foreshadow an assertion that the signatures of respondent No. 1 on the nomination papers were "forged or traced". We further observed that what the petitioner really intended in paragraphs 5 and 6 of the petition to say was that the nomination papers had been deliberately antedated with a view to make the declarations valid. We, therefore, rejected the application for the production of an expert by our order dated the 11th of July, 1953. The evidence adduced on behalf of the petitioner goes to show that the petition had been drafted by two learned Advocates. Under these circumstances it should have been expected that the case as developed in evidence (if it were really true and intended) should have been put into the fore-front of the petition itself. It cannot by any stretch of reasoning be contended that the drafters of the petition were not aware of the specific case of the petitioner. The petitioner in her statement stated that at the time of the preparation of the election petition she had definitely instructed the Advocates that the three nomination papers of Sri Bashir Husain Zaidi, respondent No. 1, had been filled in, proposed and seconded at Hardoi on 24th November 1951 and that to the best of her recollection that fact had been stated in the election petition itself. The election petition does not, however, bear out this fact. An omission of such a vital matter in the petition cannot be ascribed to inadvertence and there is therefore sufficient reason for the respondent to contend that the case as developed in evidence is an afterthought.

14. Before we proceed to examine the evidence on the question, we would briefly dwell upon certain provisions of sections 33 and 36 of the Representation of the People Act, 1951. Section 33 *inter alia* lays down that on or before the date appointed under clause (a) of section 30, each candidate shall either in person or by his proposer or seconder between the hours of 11 o'clock in the forenoon and 3 o'clock in the afternoon deliver to the Returning Officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section (2) as proposer and seconder. Section 36 of the Representation of the People Act, 1951, relates to the scrutiny of nominations. Sub-clause (4) of that section says that the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character. We have to bear these provisions of law in mind in coming to the ultimate decision of this issue after we have appraised the evidence.

15. It is not disputed that respondent No. 1 left India for Paris as a delegate to the U.N.O. on the 4th of November, 1951. Respondent No. 1 was a sitting member of the Parliament. He was at one time the Chief Minister of Rampur State. At the last general elections he intended to stand for the House of People from Rampur constituency. In September, 1951, he applied for a Congress ticket and attached with it a cheque for Rs. 250 as the application fee and gave it to Pt. Kesho Datt D.W. 3, who was the President of the District Congress Committee, Rampur. In the second or third week of October, 1951, respondent No. 1 came to know that two names were under consideration for the Rampur constituency, namely, those of Maulana Abul Kalam Azad and Dr. Zaqir Husain, Vice-Chancellor of the Aligarh University. As has been deposed by respondent No. 1 when he came to know of it, he gave up the idea of standing from the Rampur constituency, because he did not wish to compete with these two distinguished gentlemen. He then thought of standing from Moradabad or from Bareilly or from Shahjahanpur or Muzaffarnagar and ultimately upon the advice of Pt. Kesho Datt D.W. 3, the present constituency was thought of because Pt. Kesho Datt after contacting Sri Mohan Lal Varma P.W. 13, who was then the President of the District Congress Committee, Hardoi, had gathered support from him.

The reason for that support was not far to seek. There was internal strife in the Congress camp at Hardoi and there were two parties in it, one headed by Sri Mohan Lal Varma P.W. 13 and the other headed by Sri Chheda Lal Gupta D.W. 2. Originally Sri Chheda Lal Gupta had been supporting the candidature of Sri Ram Ratan Gupta for this seat and in fact election propaganda had already been started in that area by Sri Ram Ratan Gupta supported by Sri Chheda Lal. Sri Mohan Lal Varma P.W. 13 on the other hand was supporting the candidature of one Sri Niranjana Singh Deo whose name had been forwarded for the grant of a Congress ticket. In fact the U.P. Congress Parliamentary Board had recommended to the Central Congress Parliamentary Board the name of Sri Ram Ratan Gupta of Kanpur for this seat, as has been admitted by Sri Mohan Lal Varma P.W. 13 in his evidence. Obviously, therefore, when Sri Mohan Lal Varma found that the chances of his own nominee, namely, Sri Niranjana Singh Deo were nil and the chances of Sri Ram Ratan Gupta who was a nominee of Sri Mohan Lal Varma's rival Sri Chheda Lal were becoming brighter, Sri Mohan Lal Varma jumped at the idea of some powerful man selected against Sri Ram Ratan Gupta for this seat. This fact is supported by the evidence of respondent No. 1 and also by the evidence of Sri Kesho Datt D.W. 3. Respondent No. 1 ultimately obtained a Congress ticket for this seat from the Central Congress Parliamentary Board, but this ticket was given to him after he had left India on the 4th of November, 1951. It appears that before that date Sri Bashir Husain Zaidi, respondent No. 1, suggested to Pt. Kesho Datt that the preliminaries and the nomination papers should be prepared before he left for Paris. In the evening of the 1st of November, 1951, Pt. Kesho Datt reached Hardoi and he stayed with Sri Mohan Lal Varma. On the 3rd of November, 1951, at 6 or 6-30 A.M. one Shyam Kumar came to Hardoi from Delhi by the Dehra Dun Express and he brought with him three typed nomination forms, Exs. 1, 2 and 4 and made them over to Pt. Kesho Datt who in turn handed them over to Sri Mohan Lal Varma requesting him to get them filled up. Sri Mohan Lal Varma took those forms and got them filled up and got them also signed by the proposers and seconders. The case for the respondent is that all this had been done on the 3rd of November, 1951, and on the same date at 8-30 or 9 A.M. Sri Mohan Lal Varma made over the forms duly filled in and signed by the proposers and seconders to Pt. Kesho Datt who left Hardoi for Delhi along with Shyam Kumar reaching Delhi on the same night at about 10 P.M. and he went straight to the house of respondent No. 1 where the forms were signed by respondent No. 1 and they were left by respondent No. 1 with his wife with instructions that as soon as a Congress ticket was allotted to him the forms should be made over to Pt. Kesho Datt for presentation before the Returning Officer. The evidence of respondent No. 1 and of Pt. Kesho Datt D.W. 3 and Sri Chheda Lal Gupta D.W. 2 proved beyond any doubt that Pt. Kesho Datt presented the nomination papers to the Returning Officer on the last date, namely, the 24th of November, 1951 within the time prescribed. At the time of the presentation an affidavit Ex. 3 was made out by Pt. Kesho Datt to the effect that the signatures of Sri Zaidi on the nomination papers were made in his presence. Sri Kesho Datt emphatically repudiated the suggestion that Sri Zaidi's signatures were put in the nomination forms when they were still unfilled. He further repudiated the suggestion that the particulars were filled in at Hardoi on 24th November 1951. The story told by Pt. Kesho Datt is in perfect keeping with the entire evidence produced on this point on behalf of the petitioner. During the course of evidence learned counsel for the petitioner brought into the forefront of the case a T.A. bill, Ex. 18, for the journey undertaken from Delhi on 2nd of November, 1951 for Hardoi and for the return journey undertaken on 3rd of November, 1951, by Shyam Kumar and the purpose of the journey was specifically stated in this T.A. bill as having been for the submission of nomination papers of Sri Bashir Husain Zaidi. This bill is dated the 1st of February, 1952, and it forms part of the papers of the election expenses return that had been submitted by respondent No. 1 with the Returning Officer long before the election petition had been made. The election expenses return was filed on the 10th of April, 1952, by respondent No. 1. At that time Sri Zaidi could not have the faintest idea of an election petition and of knowing what the case of the petitioner would be. The T.A. bill Ex. 18 proves beyond any shadow of doubt that Shyam Kumar left Delhi on the 2nd of November, 1951, and reached Hardoi on the 3rd of November, 1951, for the submission of the nomination papers of Sri Zaidi. This T.A. bill puts the case of respondent No. 1 beyond all doubt.

16. The nomination papers, Exs. 1 and 2 were admittedly filled in by Sri Tribeni Sahai Advocate P.W. 1 and the nomination paper Ex. 4 was filled in by Sri Ram Kishore Kapur Vakil P.W. 2. Ex. 1 was proposed by Sri Taqdir Bahadur and seconded by Sri Vijai Chand Pande P.W. 14. Ex. 2 was proposed by Sri Mohan

Lal Varma P.W. 13 and seconded by Sri Kanhaiya Lal P.W. 3. Ex. 4 was proposed by Sri Manakki Lal P.W. 8 and seconded by Sri Sanwle Behari P.W. 6. Sri Taqdir Bahadur has not been produced. An effort was made to secure his attendance but his presence could not be had on account of his illness. The scribes and proposers and seconders had been examined on petitioner's behalf. The first question which has been pressed before us by the learned counsel for the petitioner is that the proposers and seconders as Congressmen could not subscribe to the nomination papers of Sri Zaidi before he was really given a Congress ticket. In this connection we may refer to the evidence of Dr. Sampurnanand who was examined as a witness on commission by the petitioner. Dr. Sampurnanand was a member of the U.P. Parliamentary Board for the last general election. He stated that in certain cases it did happen that Congressmen proposed and seconded a candidate before the grant of a Congress ticket and although this was undesirable, this did happen in certain instances. We find it in the evidence of Sri Virendra Nath Misra P.W. 5 that there is nothing in the Congress constitution which prohibits a Congressman to propose or second a Congress candidate for the election before that candidate is adopted and given a Congress ticket by the Parliamentary Board. We find the same thing having been stated by Sri Chheda Lal D.W. 2 who said that there was no impediment on the way of the Congressman to propose or second another candidate for a Parliamentary seat unless and until the candidate is adopted by the Central Parliamentary Board. The contention of the petitioner that respondent No. 1 could not have been proposed and seconded on the 3rd of November, 1951, because by that date he had not been given the Congress ticket, therefore, falls to the ground. The evidence of the witnesses examined on the petitioner's behalf to show that the petitioner's case that the nomination papers were filled in at Hardoi on the 24th of November, 1951 and that the proposers and seconders signed on them on the same date does not appear to us to be correct. It may be asked why the two scribes and the proposers and seconders of the nomination papers have chosen to come on behalf of the petitioner and not on behalf of the respondent. In order to arrive at an answer we have to look into the evidence of these witnesses. Sri Tribeni Sahai P.W. 1, as we have already said, was the scribe of the nomination papers Exs. 1 and 2. He deposed that Ex. 2 was filled in by him on the 3rd of November, 1951 at Hardoi and that he is unable to say on which day Ex. 1 was filled in by him, because the date contained on it is not in his handwriting. Sri Tribeni Sahai acted as the counting agent of Sri Bashir Husain Zaidi. He was present at the time of the scrutiny of the nomination papers on 27th of November, 1951. He stated that at the time of the scrutiny no objection was taken to the nomination papers by any candidate and that at the time of the scrutiny all the candidates, their proposers and seconders agreed that the validity of the nomination papers of the different candidates will not be challenged and that this was orally conveyed by them to the Returning Officer. The petitioner's witnesses themselves have stated that Sri Tribeni Sahai, Advocate, is a respected member of the Bar and he carries the reputation of honesty and integrity. If that is so, the evidence of Sri Tribeni Sahai cannot lightly be brushed aside. Several days after Sri Tribeni Sahai was examined as witness a petition had been made on behalf of Smt. Shanta Devi Vaidya that Sri Tribeni Sahai may be recalled and may be cross-examined on the petitioner's behalf on the ground that there were indications to show that he had sided with the respondent on account of his leanings towards him. There is of course no general proposition of law that a party is bound by the evidence of a witness whom he produces and no part of the statement of such a witness amounts to an admission on behalf of the party producing him. In some circumstances a court which is deciding a question of fact may say that a party produces a witness presumably because he believes that he is a witness of truth and therefore if the witness says something contrary to the interests of the party producing him, the statement must be regarded as having great weight. It is not possible to go further than that; nor is there any rule of law that a party is not able to say that a witness produced by him is not speaking the truth upon some particular point unless he makes a written application to say that the witness is hostile. *M. M. Essabhoys Vs. Mulji Haridas I.L.R. 39 Bombay 399*, at page 409 will be referred to in this connection. In the present case we are satisfied that Sri Tribeni Sahai is a witness of truth and that when he stated that Ex. 2 was filled in by him on the 3rd of November 1951, he should be believed. The fact that on the day Sri Tribeni Sahai was examined no motion either written or oral had been made to declare the witness hostile and no motion was further made to cross-examine him on petitioner's behalf cannot be lightly ignored. If we look into the general trend of evidence, we would find that it was at a later stage of the case that a suggestion was thrown out that Sri Tribeni Sahai may have a soft corner for respondent No. 1 on account of his past relationship with him and therefore he went against the petitioner in deposing that the nomination paper Ex. 2 had been filled in by him on the 3rd of November, 1951. This suggestion

in our opinion is not acceptable having regard to the totality of the circumstances proved in the case. It appears that on the 24th of November, 1951, which was the last date for the submission of nomination papers the delay in receiving the nomination papers of Sri Zaidi from Delhi had created certain amount of anxiety amongst the Congress workers at Hardoi. Consequently Chief Minister, Pt. Pant, was contacted and his instructions were invited and it is admitted that he said on phone that the nomination papers of Sri Zaidi should be awaited. This is borne out by the evidence of the petitioner's witnesses themselves. This is another indication to show that the nomination papers of Sri Zaidi for this particular seat were ready and were expected to be received. The evidence of Shri Ram Kishore Kapur P.W. 2 who was the scribe of Ex. 4 on the question of the date when the nomination paper was filled in by him is supremely vague. It may be asked why the proposers and seconders of the nomination papers have come forward to support the theory that the nomination papers had really been filled in and signed by the proposers and seconders on the 24th of November, 1951. There is evidence to show that after the election was over Sri Mohan Lal Varma made an effort to extract some money out of respondent No. 1 which according to some of the witnesses had been spent by Sri Mohan Lal Varma in this election from out of his own pocket for respondent No. 1, and according to other witnesses had been spent by him from out of Congress money. That an attempt was made is a fact which is not disputed by Sri Mohan Lal Varma and by the other witnesses for the petitioner. While it is contended on behalf of respondent No. 1 that no such money was due from respondent No. 1 either to Sri Mohan Lal Varma personally or to the Congress Organization and while it is further contended on behalf of respondent No. 1 that Sri Mohan Lal Varma and the other witnesses who all belong to the party of Sri Mohan Lal Varma wanted to blackmail the petitioner, the theory of blackmailing when put to the petitioner's witnesses were refuted by them. We have already said the fact admits of no doubt that there was a demand and the fact further admits of no doubt that that controversy was at a certain stage referred to Sri Rafi Ahmad Kidwai and to certain others; but at the same time the fact further remains that Sri Bashir Husain Zaidi refused to submit to any such demand and at any rate he did not pay up any money to Sri Mohan Lal Varma. Sri Mohan Lal Varma as President of the District Congress Committee spent certain amount from the Congress Organization in this election on behalf of respondent No. 1. Those expenses formed part of the election expenses return that had been submitted by respondent No. 1 with the Returning Officer. The vouchers concerning the same are signed by Sri Mohan Lal Varma and they have been paid for by respondent No. 1. If any other sum were really due to the Congress Organization the same could have been demanded by the Organization itself from respondent No. 1. No such demand has so far been made. Consequently it is extremely doubtful whether any further sum was due to the Congress Organization from respondent No. 1 in connection with this election. Even if we do not go the length of accepting the contention of respondent No. 1 that a demand was made by Sri Mohan Lal Varma and his supporters, namely, the other witnesses for the prosecution, to blackmail him, we cannot shut our eyes to the fact that a demand for money was made by Sri Mohan Lal Varma and by the witnesses and that demand was not complied with by respondent No. 1, and it certainly created a grudge in the minds of Sri Mohan Lal Varma and the other witnesses which possibly impelled them to withhold the truth.

17. If we keep in mind the provisions of rule 119 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, and also the evidence of the petitioner, there can be no doubt whatsoever that the petition is the outcome of some adventitious aid and was not the act of the petitioner herself without any influence from outside quarters having been brought to bear upon her. Rule 119(a) says that the election petition may in the case where such petition is against a returned candidate be presented under section 81 at any time after the date of publication of the name of such candidate under section 67, but not later than 14 days from the date of publication of the notice in the official gazette under rule 113 that the return of election expenses of such candidate and the declaration made in respect thereof have been lodged with the Returning Officer. Sub-clause (b) of that rule says that in the case where there are more returned candidates than one at an election and the election petition calls in question the election as a whole, it may be presented under the said section 81 at any time after the date of publication of the names of all the returned candidates under section 67 but not later than 60 days from the expiration of the time specified in sub-rule (1) of rule 112 for the lodging of the returns of election expenses of those candidates with the Returning Officer. Shrimati Shanta Devi Vaidya, the petitioner, stated before us that all the evidence which she has adduced in the case was against Sri Bashir Husain Zaidi and not against the other returned candidate, Sri Bulaqi Ram. She further stated that what she really intends is that the election of Sri Bashir Husain Zaidi should be declared null and void. She went on to confirm that on the date the result of

the election was announced she had decided that she would make this election petition and in that connection she consulted two of her legal advisers who are representing her in this case and they told her that the election petition was to be presented within 14 days. She stated that as she was not able to present the petition within 14 days from the date of the publication of the return of election expenses inasmuch as she was not in funds and could not arrange the security money, her legal advisers told her that the only course that was left open to her was to challenge the whole of the election as void and not simply the election of Sri Bashir Husain Zaidi and that then alone would she get an enlargement of time. Obviously, therefore, the course adopted by the petitioner was not originally intended and would in a certain sense amount to a fraud on the election law. If Sri Bulaqi Ram's election was never intended to be challenged, and has not in fact been challenged, the petitioner could not attract in her favour the enhanced period of limitation merely by shaping a relief that the whole of the election may be declared *null and void*. The course adopted by the petitioner lends it susceptible to the interpretation that the petition has been engineered by Sri Mohan Lal Varma who in May 1952, i.e. before the filing of the present petition had made a demand of certain money from respondent No. 1 and met with a rebuff. It is not disputed that almost all the proposers and seconders of these nomination papers are persons who belong to the party of Sri Mohan Lal Varma. They would naturally be under his influence. It would be quite obvious to us that they would be susceptible to that influence and that they have not come forward to give a true and unvarnished story as "upholders and defenders of truth" as has been contended by them. We have not been able to appreciate their contention when they have stated in evidence in one breath that they have come forward to give the truth as defenders of truth and in the other breath when they have said that their effort in the present case is that the election of respondent No. 1 should be allowed to stand. No more inconsistency can be envisaged than this. We are satisfied from the evidence that the nomination papers were filled in, proposed and seconded in the morning of the 3rd of November, 1951, at Hardoi, that they were brought to respondent No. 1 at Delhi on the same night between 10 and 11 p.m. when he signed on them and that they were presented to the Returning Officer in time on the 24th of November 1951, and they were rightly accepted as valid nomination papers. The assertions made in paragraphs 5 and 6 of the petition are not correct and those assertions would not invalidate the nomination papers. There is further not an iota of evidence to show that the result of the election has been materially affected thereby.

18. The law on the subject is to our mind clear on the point. The petitioner quoted *Human Vs. Park* (7 QBD 369) to show that the nomination paper must be fully filled up before it is subscribed by anyone, but this case was distinguished in *Coz Vs. Davies* (2 QBDP 202) in which the candidate's name had not been put in when the proposer and the seconder signed the paper and in which it was held that if the signatures of the proposers and seconders were taken or filling in of the name of the candidate that they did not intend, it would be a different matter, but that a nomination paper signed before it is properly filled up is not necessarily bad. In the present case even if the contention of the petitioner is accepted, the proposers and the seconders were filling in the nomination form of a candidate whom they really intended. Consequently, the nomination papers could not be bad. In the *Midnapur South Case* (2 HIEB 185) the respondent before leaving for an outstation accepted the proposal of nomination and signed some nomination papers and left instructions to his proposers to fill up completely one of the said nomination papers in all its details including the date which was to be the date appointed for the nomination and in pursuance of this agreement the proposer filled up the nomination form and signed in the place set apart for the signature of the proposer and the seconder put his signature in the place meant for the signature of the seconder. The respondent also left instructions to appoint the said proposer or himself (if the proposer was unwilling to be the agent) as his election agent and to deliver the same to the Returning Officer and he put his signature under the clause "I hereby declare that I have appointed..... to be my election agent." The proposer put the word "myself" in the blank space in pursuance of these instructions. On these facts the petitioner contended that the respondent could not have signed the declaration at the fact of the nomination paper after the nomination had been duly proposed and seconded as required by law and that his signature must have been put on a blank paper or forged. It was held that the nomination paper has not to be filled in at any particular time, that it may be filled up days before the nomination and it may even be presented to the Returning Officer before the date fixed for the nomination of the candidate, that if the respondent and his proposer and seconder had filled in the paper he left, it would have been a good paper when delivered afterwards by his proposer and seconder, that what the respondent did was to sign the nomination paper after he accepted

the proposal of his proposer and seconder and left it with instructions to them to fill up the other particulars, that the decision in Cox Vs. Davies would cover the case and that the course adopted by the respondent, although somewhat irregular, does not appear to be contrary to any provisions of law and that the nomination was, therefore, not invalid. In the present case even if for the sake of argument we were to allow the contention of the petitioner on issues 1(a) and 1(b) to prevail, then having regard to the decisions quoted above the nomination cannot be said to be invalid.

19. In Mahant Digvijai Nath Vs. Sri Prakash (Sen and Potdar Indian Election Cases 1935-1951 147), it was held that there is no provision in the rules requiring that a candidate should sign his nomination paper after the proposer and seconder subscribe to it, nor is any invalidating consequence provide for in case a candidate gives his assent before the proposer and seconder sign the nomination paper. We would therefore find issues 1(a) and 1(b) against the petitioner.

20. As regards issue 1(c), we have already stated above that there is no positive evidence on behalf of the petitioner to show that the result of the election has been materially affected by the irregularities found to exist in some of the ballot boxes. It has been urged on behalf of the petitioner that no direct evidence on the point was possible and that the condition of the boxes was such that it might have been possible to transfer the ballot papers of one candidate from his box to the box of another candidate without breaking the seals. The law on the subject is different in India than it is in England. In interpreting the provision of law in England Lord Coleridge C. J. in Woodward Vs. Sarsons (LR 10 CP 733) laid down that it will be equivalent to this that the non-observance of the rules or forms which is to render election invalid must be so grave as to amount to conducting of an election in a manner contrary to the principles of an election by ballot and must be so great as to satisfy the Tribunal that it did affect or *might have affected* the majority of votes or in other words the result of the election. Here in India the law is contained in section 100 (2)(a) and (c) of the Representation of the People Act, 1951. It says that the result of the election "has been materially affected" and not *might have been affected*. It may be that in some circumstances the provisions of this rule may operate harshly where a Tribunal may treat that the result of an election may well have been affected by a serious irregularity and it may be impossible for the petitioner to establish this positively, but we have to interpret and follow the rule as it stands. As there is no evidence to show that the result of the election has been materially affected, we would find issue No. 1(c) against the petitioner.

21. From what has been stated above we would come to the conclusion that the petitioner is not entitled to any relief and we would find issue No. 5 against her.

22. In the result the petition is dismissed. The petitioner shall bear her own cost and shall pay the cost of respondent No. 1 which we assess at Rs. 500. The other respondents are to bear their own costs.

(Sd.) D. N. Roy, *Chairman*.

(Sd.) A. SANAYAL, *Member*.

(Sd.) M. U. FARUQI, *Member*.

The 30th September, 1953.

ANNEXURE

BEFORE THE ELECTION TRIBUNAL, FAIZABAD

ELECTION PETITION No. 321 OF 1952

Shrimati Shanta Devi Vaidya—*Petitioner*.

Versus

1. Sri Bashir Husain Zaidi,
2. Sri Bulaqi Ram,
3. Sri Indrajit Singh Rajpasi,
4. Sri Kishan Chand Puri,
5. Sri Gajraj Bahadur,
6. Sri Chokhey,
7. Sri Niranjan Singh Dev,
8. Sri Prakash Narsain Mukhtar,
9. Sri Munishwar Baksh Singh,

10. Sri Ram Ratan Gupta,
11. Sri Ram Swarup Gupta,
12. Sm. Moti Shanta Devi Vaidya,
13. Sri Hira Lal,
14. Sri Sunder Lal Ji,
15. Sri Ram Nath,
16. Sri Chidda Lal,
17. Sri Ram Sewak—*Respondents*.

ORDER

This is an election petition filed by Shrimati Shanti Devi Vaidya, who was one of the candidates for election to the House of the People from Hardoi District (North-West)-cum-Farrukhabad District (East)-cum-Shahjahanpur District (South) Constituency for the general election held in 1951-52, challenging the election of respondents Nos. 1 and 2, who are the returned candidates and claiming that the election be declared null and void as a whole.

The petition has been contested by respondents Nos. 1 and 2. A written statement has also been filed by respondent No. 13, who has lent support to the petitioner. In his written statement respondent No. 1 raised the plea, *inter alia*, that many of the allegations in the petition of Shrimati Shanta Devi Vaidya are indefinite, general and vague, without the requisite list and instances specifying the alleged practices. The particulars of indefiniteness and vagueness were stated by respondent No. 1 in a petition filed by him, a copy of which was furnished to counsel for Shrimati Shanta Devi Vaidya. It was prayed on behalf of respondent No. 1 that those allegations in the petition of Shrimati Shanta Devi Vaidya and in the annexure appended to it which are not accompanied by a list and are wanting in particulars should be struck off, and that issues should be framed after the decision of that matter. It was urged in support of that application that the matters which can properly be made the subject of investigation and decision will be limited to a very narrow compass after the decision of the petition aforesaid, and that it is but necessary that the respondents should know the extent and scope of the evidence that they would be required to lead at the trial. After that petition was made and arguments were heard on it, an application purported to be one under section 83(3) of the Representation of the People Act 1951 was made on behalf of the petitioner Shrimati Shanta Devi Vaidya, to which was annexed a list of particulars, which manifestly had been wanting in the original petition or in the original annexure attached to that petition. In answer to this application under section 83(3) of the Act, the respondent has contended that the petitioner is not entitled to submit this fresh list in view of the mandatory provisions of section 83(2) of the Representation of the People Act 1951.

The preliminary question which we have, therefore, to decide at this stage is whether the original petition and the annexure attending it suffer from being general, vague and indefinite? If so, whether any of the allegations in the petition and in the annexure should on that account be deleted? We have also to consider the further question whether the particulars subsequently furnished in the petition under section 83(3) of the Representation of the People Act 1951 by Shrimati Shanta Devi should or should not be accepted. We have examined the original petition of Shrimati Shanta Devi Vaidya, dated the 6th of June 1952 presented before the Election Commission of the Union of India, and also the annexure appended to it, and we are definitely of opinion that very many of the allegations contained in the petition and in the annexure suffer from the defect of being general, vague and indefinite; and they cannot, on that account, be made the subject of charge or of investigation. We are further of opinion that the subsequent petition purported to have been made under section 83(3) of the Representation of the People Act 1951 cannot be accepted. Section 83 of the Representation of the People Act 1951 is as follows:—

- Section 83 “(1) An election petition shall contain a concise statement of the material facts on which the petitioner relies, and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.
- (2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice.

- (3) The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may, in its opinion, be necessary for the purpose of ensuring a fair and effectual trial of the petition.

These provisions have made the law relating to particulars much more stringent in India than it is in England. A petitioner is obliged to disclose his case at the very earliest opportunity. It is a salutary provision and gives effect to the opinion expressed by Bruce J. as far back as 1895 in the Lancaster Case (5 O' M and H. 41, 42). A plain reading of section 83 of the Representation of the People Act 1951 will make it sufficiently clear that it will not be full compliance of this rule to allege generally in the petition that "Respondent by himself and other persons on his behalf was guilty of bribery, treating and undue influence before and during and after the election." An enactment, which requires the petitioner to furnish full particulars has been framed with a view to give the earliest possible notice of the charges relied upon by the petitioner to the respondent and to prevent his being harassed by fresh matter being introduced at later stages. The use of the word "shall" in section 83(2) of the Act shows that the provision is mandatory. Under section 83(2) the petitioner is obliged to set forth full particulars of any corrupt or illegal practice which he alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice. Section 83(3) of the Act says that the Tribunal may, upon such terms as to costs and otherwise as it may direct at any time allow the particulars included in the said list to be amended, or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition. It is therefore obvious that the amendment under section 83(3) of the Act, or the demand of further and better particulars in regard to any matter referred to therein, can be made only if the petitioner has furnished some particulars in the original list. It is not open to a petitioner to plead that at the time of presenting his petition, it was impossible to get any particulars at all. If such a plea were to be allowed, then the whole object of the Act will be frustrated; as a list might subsequently be presented with an affidavit alleging impossibility of earliest discovery. It is, therefore, incumbent upon a petitioner to state at the very outset the particulars on which allegations are based. Consequently, it follows that if particulars are not at all given, those paragraphs in the petition or in the annexure which deal with corrupt or illegal practices, or even with irregularities, should be struck off. The view that we have taken is supported by authority and precedent. The word "particulars" in section 83(2) of the Representation of the People Act 1951 is no doubt restricted to "corrupt or illegal practices". Nevertheless if "irregularities" are alleged, a concise statement of material facts as required by the rules should be furnished. This view was taken in the Bulandshahr Case (1-H.I.E.P.—86, 87).

In the Calcutta North (N.M.U.) (1924 Case) (Hammond's Election Cases, India and Burma, 1920-1935 page 253), the petitioner had charged the respondent with "being guilty of practically every sort of corrupt practices" enumerated in the rules and regulations. The respondent before the date fixed for the trial, submitted that no particulars had been given of the various alleged "corrupt practices" and that the petition should be dismissed so far as it was founded on corrupt practices of which no particulars were given as required by law. The Commissioners limited the case to charges of which particulars had been given.

In the Bulandshahr Case (1-H.I.E.P.86), the Commissioners struck off all the paragraphs of the petition which did not give a concise statement of the material facts and particulars as required by the Rules; and the Commissioner opined that it would be a dangerous precedent to encourage any laxity with regard to this Rule.

In the Rangpur (East) Non-Mohammadan Constituency (R. S. Panchanan Barma Vs. Babu Jatindra Nath Chakrabutty) (Jagat Narain's report of Indian Election Petitions, Volume III, 1926-1928, page 235) the Commissioners held that fresh instances of corrupt practices cannot be admitted by way of amendment of particulars given in the petition and that where the particulars given in the petition were so vague that calling for further and better particulars would have amounted to the introduction of fresh instances, such further and better particulars could not be admitted.

In the Rohtak North-West (N.M.R.) Case. (Chaudhri Matu Ram Vs. The Hon'ble Rao Bahadur Chaudhri Lal Chand) (Jagat Narain's Report of Indian Election Petitions, Volume II, 1923-1925, page 159) the Commissioners held that amendment of petition so as to introduce fresh charges of the particular corrupt practice alleged is not permissible.

In Hafizabad Mohammadan Constituency Case, (Ahmad Khan and another Vs. Raja Mohammad Chaudhry) (Daobia's Indian Election Cases, 1935-1950, Volume I, page 265), it was observed that where the charges mentioned in the petition were not supported by any particulars whatsoever, the Commission must refuse to frame issues on those charges.

In Hissar North (General) Constituency Case (Ch. Sheokaran Singh and another Vs. Cr. Sahib Ram) (Daobia's Indian Election Cases, 1935-1950, Volume I, page 297 at page 307), the Commissioners made the following observations:—

"There is abundant authority for the view that a fresh instance of a corrupt practice cannot be regarded merely as an amendment of the particulars of such corrupt practice. Each single instance of the corrupt practice alleged is a substantive charge, and there can be no doubt that the corrupt practice stated to have been committed at the villages mentioned above which are not mentioned in the petition, constitutes fresh instance of the same corrupt practice, viz. undue influence by means of the posters. It would thus appear that if at any time during the hearing of this petition an application had been made by the petitioners for addition of the names of those villages to his petition, that application would have been liable to rejection for the simple reason that it did not furnish further particulars of a corrupt practice already alleged in the petition, but added to the substantive charge of corrupt practice already contained in the petition. Among authorities having a bearing on this point may be cited—Akyab (Indian Urban) 1928, case (H.I.E.C. 1936 page 47); the Bulandshahr District (East) 1921, case (H.I.E.C. 1936 page 219); the Amritsar City (M), 1924, case (H.I.E.C. 1936 page 85); the Kistna (N.M.R.), 1928, case (H.I.E.C. 1936 page 448); and the Calcutta North (N.M.U.), 1924, case (H.I.E.C. 1936 page 255)."

In Hoshiarpur West (General) Constituency (Case No. 1) (Hazara Ram Vs. S. Mula Singh) (Daobia's Indian Election Cases, 1935-1950, Volume I, page 316), it was observed that where the lacunae in the particulars of an instance of a corrupt practice, as stated in a list appended to a petition, are such that in filling up the gaps it is possible to introduce a new instance or an instance of a different kind from that originally intended then the addition of further particulars should not be allowed, as it involves the possibility of being unfair to the respondent and of permitting the petitioner to turn his own default to advantage.

In the light of the principles enunciated above, we have examined the election petition dated 6th June 1952 of Shrimati Shanta Devi Vaidya and the annexure appended to it, and we are of opinion that the following paragraphs in the same are vague, indefinite and wanting in particulars and should be struck off and should not form the basis of investigation:—

Para. 4 of petition—"That the aforesaid election was not "a free and fair election by reason of corrupt and illegal practices as defined u/s 123(1), (2), (3), (4), (5), (6), (7) & (8) u/s 124(1), (2), (3), (4), (5), (6), and u/s 125(1), utter disregards of the election law and rules and material irregularities which extensively prevailed at the aforesaid election as hereinafter stated, and materially affected the result of the election."

Part of para. 5 of the petition: viz. the words—"of some of the respondents and in particular those....." "whose nomination papers were prepared in utter disregard of the election rules and laws in a most unfair and fraudulent manner and whose nominations were not clearly intended for the seat for which he sought election, and some of his nomination papers have subsequently been tampered with with a view to rectify their defects."

Para. 7 of the petition—"That the respondent No. 1 was not qualified, rather he was disqualified from seeking election and from setting himself as a candidate or from being set up as a candidate or being a proposer or a seconder. He has also been holding an office of profit, a director of recognised companies".

Part of para. 8 of the petition, viz. the words—"against the rules and laws. The nomination of the Respondent No. 1 was not valid and was illegal and *ultra vires*."

Para. 9 of the petition—"That the result of the aforesaid election "was further materially affected by the non-compliance of the provisions of the Constitution of India, of the Representation of the Peoples Act, 43 of 1952 and of the Rules and Orders made under the aforesaid Act and other Acts and rules relating to elections."

Para. 11 of the petition—"That Respondent No. 1 also committed corrupt practices by providing entertainments (a) to the electors and persons employed in the conduct of elections before and during the election, and (b) on the counting days and after counting and his actual election expenses were far in excess of those shown by him in his return of election expenses."

Para. 12 of the petition—"That on account of the corrupt and illegal practices, breach of rules, violation of all principles and canons of equity, good conscience and natural justice, hooliganism, bribery, undue influence and material irregularities practiced and indulged in on a large and extensive scale by the Congress workers and also by the supporters of respondent No. 1 and 2 by the officials under the influence of the Congress, the petitioner was made to lose her parliamentary seat in the aforesaid election which she was otherwise won as evident from the overwhelming large support that she actually received throughout the aforesaid Constituency, and the result of the election as a whole was materially affected on account of the aforesaid causes."

The whole of annexure "A" to the petition, except paras. (a), (b), (f) and (g) under the heading "details of the conditions of the ballot boxes," and para. (a) under the heading "irregularities".

We hold accordingly and we direct that in the petition and the annexure, the allegations aforesaid be deleted. We decline to entertain the subsequent petition dated 22nd December 1952 together with its annexures made by the petitioner under section 83(3) of the Representation of the People Act 1951.

(Sd.) D. N. ROY, *Chairman.*

(Sd.) A. SANYAL, *Member.*

(Sd.) M. U. FARUQI, *Member.*

The 17th January, 1953.

[No. 19/321/52-Elec.III/4220.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*